

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

VERAX BIOMEDICAL INC.,

Plaintiff,
v.

AMERICAN NATIONAL RED CROSS,

Defendant.

Civil Action No.: 1:23-cv-10335-PBS

**AMERICAN NATIONAL RED CROSS'S MOTION TO DISMISS THE COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.1, Defendant American National Red Cross (“Red Cross”) hereby moves, by and through its undersigned counsel, for an order dismissing the complaint filed by Plaintiff Verax Biomedical Inc. (“Verax”) in the above-captioned action.

As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. *First*, Verax cannot maintain any antitrust claim under the Sherman Act because:
 - a. The Red Cross is a federally-chartered instrumentality of the United States and is therefore not a “person” who can be liable under the Sherman Act;
 - b. Verax does not and cannot allege that it buys from, sells to or competes with the Red Cross in the alleged market for “bacteria mitigation services” and thus cannot allege that it suffered an “antitrust injury” as required by law;
 - c. The Red Cross cannot be liable for tying, monopolizing or attempting to monopolize “bacteria mitigation services,” as Verax claims, when the Red Cross does not even sell that product; and

- d. Verax failed to allege that the Red Cross's use of pathogen reduction technology to manufacture FDA-compliant platelets has harmed *competition* in a market for "bacteria mitigation services" as required to state a claim for exclusive dealing or attempted monopoly.
2. *Second*, Verax failed to state any claim for relief under Massachusetts law because:
- a. None of the Red Cross's alleged statements are defamatory of Verax as a matter of law;
 - b. Verax has not alleged that the Red Cross's conduct interfered with any actual contractual relationship or customer; and
 - c. Verax's Chapter 93A claim is derivative of other claims (that also fail) and, according to Verax's own allegations, the relevant events did not occur "primarily and substantially" in Massachusetts.

For these reasons and those set forth in the accompanying memorandum of law, the Red Cross respectfully requests that the Court issue an order dismissing Verax's complaint in its entirety and award such further relief as is just.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), the Red Cross believes that oral argument on this motion will aid and benefit the Court in its analysis of the sufficiency of the complaint. The Red Cross therefore respectfully requests that the Court schedule oral argument on this motion to dismiss at a date and time of the Court's convenience.

Dated: April 17, 2023

Respectfully submitted,

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel has conferred in a good faith effort to resolve or narrow the issues raised in this motion. Plaintiff opposes the relief requested in this motion.

/s/ William J. Trach
William J. Trach

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, which was filed with the Court through the CM/ECF system, will be sent electronically to all registered participants as identified on the Notice of Electronic Filing (“NEF”) and paper copies will be sent on April 17, 2023 to those identified as non-registered participants.

/s/ William J. Trach
William J. Trach